

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

BADAR KHAN SURI,

Petitioner,

v.

DONALD TRUMP,

Respondent.

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: Civil Action
: No. 1:25-cv-00480-PTG-WBP
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: May 14, 2025
: 10:04 a.m.
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**TRANSCRIPT OF BOND HEARING PROCEEDINGS
BEFORE THE HONORABLE PATRICIA TOLLIVER GILES,
UNITED STATES DISTRICT COURT JUDGE**

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MORNING SESSION, MAY 14, 2025

(10:04 a.m.)

THE COURTROOM CLERK: The Court calls *Badar Khan Suri versus Donald Trump*, et al., Case Number 1:25-cv-480.

May I have appearances, please, first for the Petitioner?

MS. GREGG: Good morning, Your Honor. Sophia Gregg from the ACLU of Virginia on behalf of Petitioner. I'm here with Eden Heilman, Astha Sharma Pokharel, Hassan Ahmad, Naureen Arastu, Geri Greenspan, Vishal Agraharkar, and Celine Zhu.

THE COURT: Good morning to all of you.

MS. SPAVINS: Good morning, Your Honor. Elizabeth Spavins, Assistant United States Attorney. With me at counsel's table is my colleague, Christian Cooper, and then presenting for the Respondents today will be David Byerley of the Office of Immigration Litigation at Main Justice, and next to him is Tom Scott-Sharoni, also from OIL. Thank you.

THE COURT: Good morning to all of you. So, we are on today on Petitioner's pending motions, the motion for return, as well as the motion for bail.

MS. GREGG: That's correct, Your Honor.

THE COURT: So I'll hear from you first.

MS. GREGG: Yes, Your Honor. If there's no preliminary matters, we'll start with our motion for bail.

We're here today because Dr. Khan Suri is being unlawfully detained for his wife -- his and his wife's lawful expression in

1 support of Palestinian rights and his ties through their marriage
2 to her father.

3 About two months ago, after celebrating Ramadan with his
4 Georgetown community, Dr. Khan Suri came home to armed masked men
5 who handcuffed him and drove him away from his wife, children,
6 and the life he had. He is now over a thousand miles away from
7 his home, the people he cherishes most, his lawyers, and this
8 court, packed into an overcrowded detention center and subjected
9 to the most severe restrictions usually reserved for people
10 convicted of violent crimes awaiting deportation.

11 The impact of the unlawful actions on Dr. Khan Suri and on
12 the millions of lawful residents, students, professors, and visa
13 holders of all kinds is hard to overstate. Their speech isn't
14 just chilled. They are afraid. They are afraid to exercise
15 their core constitutional rights to write an op-ed, to post on
16 social media, and to dare to criticize the government.

17 This fear is profound. And what is shocking is that the
18 government doesn't deny it. The government announced it would do
19 this in advance, and they have doubled down at every opportunity,
20 and they've had ample opportunity to respond to Dr. Khan Suri's
21 claims in this case before this hearing.

22 In response that he is being imprisoned and retaliated
23 against for speech, the government says nothing. In response to
24 the claim that the government targeted Dr. Khan Suri because of
25 his wife's speech, her Palestinian origin, or family ties, the

1 government says nothing.

2 In response to the claim that the government targeted
3 Dr. Khan Suri because of his wife -- I'm sorry. The government
4 does not claim that Dr. Khan Suri was imprisoned due to any
5 illegal conduct or for any other constitutionally sound basis.

6 We're asking this Court to release Dr. Khan Suri pending
7 his habeas petition, after which this Court can fully examine the
8 constitutional violations of the government's actions.

9 THE COURT: Do we even know the exact statements that are
10 at issue? Have they identified the alleged statements that he
11 made?

12 MS. GREGG: The government has not put forth any evidence
13 so far in this case regarding any statements or any other reason
14 for his detention.

15 THE COURT: Okay.

16 MS. GREGG: Courts considering bond pending immigration
17 habeas petitions use the *Mapp* -- use the *Mapp v. Reno* standard,
18 which requires a court to evaluate two things: Whether or not
19 there are substantial claims in the case and whether or not there
20 are extraordinary circumstances. There are both here.

21 While the government argues that Petitioner must meet a
22 heightened standard in *Eliely*, which requires both a substantial
23 constitutional claim upon which he has a high likelihood of
24 success, and extraordinary circumstances, that standard is for
25 habeas petitioners already tried and convicted by a court of law.

1 Here, Dr. Suri is being detained on unproven civil
2 immigration charges challenging the unconstitutionality of his
3 detention.

4 Release on bail here under the standard articulated in
5 *Mapp* is reasonably similar to pretrial release in a criminal
6 case.

7 Dr. Khan Suri brings several substantial claims, but most
8 predominantly is the claim that he has been detained solely for
9 the content of his speech, which must be afforded the highest
10 protection under the First Amendment.

11 The government doesn't deny this. The government has
12 targeted him in retaliation for exercising his right to free
13 speech under the First Amendment. And, again, the government
14 doesn't deny this.

15 That must be a substantial claim. Likewise, there is no
16 evidence that the government has targeted and detained Dr. Khan
17 Suri except in retaliation for exercising his lawful speech and
18 associations.

19 The evidence submitted by Petitioner, namely the
20 government's own statements, supports the fact that the
21 government's objectives in detaining Dr. Khan Suri is punitive in
22 purpose and violates the due process.

23 In considering exceptional circumstances, the
24 courts consider what *Mapp* calls unusual cases. Except for the
25 handful of current cases that we've brought to the attention of

1 the Court and the Court is aware, in nearly identical
2 circumstances there have been no cases in which the government
3 has used this particular provision to detain someone for lawful
4 speech.

5 That is exceptional. What is also exceptional is the fact
6 that there is no evidence that Dr. Khan Suri is a danger or a
7 flight risk. The government was given ample opportunity by this
8 Court in advance of this hearing to present any evidence in
9 opposition to this motion for release, and it provided none.

10 Dr. Khan Suri, however, has demonstrated through an
11 abundance of letters of support from people who know him that he
12 is a kind, caring friend and colleague who leads with a
13 commitment to peace.

14 He's supplemented with even more letters that pour in
15 every day from people of the Georgetown community and people who
16 have known him --

17 THE COURT: I've read them all.

18 MS. GREGG: Yes. If released, he would return to his home
19 in Roslyn, Virginia where he lives with his wife and children.

20 If he's able to, his Georgetown dean and director fully
21 support Dr. Khan Suri's return to work and teaching.

22 The director of the Alleywood Center is here today in
23 support of Dr. Khan Suri's release as well, as are many members
24 of his community.

25 Finally, release is necessary to make the habeas remedy

1 effective because Dr. Khan Suri's attention necessarily
2 constitutes a continued infringement on his First Amendment and
3 due process rights.

4 An infringement on those rights may be justified if the
5 government had presented a legitimate case, but it has not done
6 so.

7 In the meantime, with every passing day, his detention
8 chills the speech of millions and millions of noncitizens who may
9 now not exercise their First Amendment rights for fear of being
10 whisked away to a detention center thousands of miles away from
11 their home.

12 For these reasons and the many other reasons articulated
13 in our motions and supplemental briefing, we ask this Court to
14 release Dr. Khan Suri so that his habeas remedy can be effective.

15 THE COURT: One issue that they raised in their
16 supplemental, and I don't know if it's necessary for me to reach
17 it in order to rule today, is with regard to your void for
18 vagueness challenge. Do you have any authority where a void for
19 vagueness challenge has been made as to a policy or regulation?

20 MS. GREGG: Well, Your Honor, the -- I think the cases
21 that, first, that the government cited don't necessarily say that
22 it doesn't apply to a policy, per se, but here the issue is that
23 there is not just the law that he's being charged under that is
24 void for vagueness, but it's implementation through the executive
25 orders themselves. That, as a whole, would -- are void because

1 the void of vagueness standard basically requires that due
2 process make the policy or the law clearly defined.

3 And if it doesn't provide the kind of notice that will
4 enable a person or people to understand what the conduct
5 prohibits, it would be -- or if it would authorize or even
6 encourage arbitrary discrimination or enforcement, as it has done
7 here, it would -- it would not satisfy the void for vagueness
8 standards that are articulated in the cases.

9 We don't have -- even if the Court is not inclined to
10 consider the void for vagueness argument or claims in this case
11 as being a substantial claim, there are many substantial claims
12 in this case that would be sufficient for the standard under
13 *Mapp*. It doesn't say that all the claims must be substantial so
14 much that a substantial claim would be sufficient.

15 THE COURT: Okay. So it's your position that, either
16 under your First Amendment claim or under your Fifth Amendment
17 claim, either of those would be sufficient?

18 MS. GREGG: Correct, Your Honor.

19 THE COURT: Thank you.

20 MR. BYERLEY: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. BYERLEY: As the Court's opinions have shown, ample
23 attention has been paid to the brief, so I'm not going to repeat
24 a lot of what's been said in the brief.

25 THE COURT: Thank you.

1 MR. BYERLEY: But, briefly, the Court should deny the
2 pending motions because the standards set by the *United States*
3 *versus Eliely*, which is the Fourth Circuit's, granted it's
4 unpublished, but it's the Fourth Circuit's equivalence of whether
5 habeas release pending a determination on an ultimate habeas
6 petition should be granted, is pretty high. It requires
7 substantial constitutional claims on which he has a high
8 probability of success.

9 THE COURT: Haven't they created sustained claims, though?

10 MR. BYERLEY: Your Honor, the Government does not believe
11 that they have because of many of the jurisdictional bars that we
12 talked about in our briefing, including 1252(a)(5) and (g).
13 Those jurisdictional issues, even maybe not, perhaps, directly at
14 issue, even in the context of determining whether *Eliely* release
15 is appropriate, but it does present an obstacle to their claims
16 on the merits. And then furthermore --

17 THE COURT: How so?

18 MR. BYERLEY: So, what Mr. Suri is challenging in his
19 petition is the decision to institute removal proceedings against
20 him.

21 THE COURT: That's not what he's challenged.

22 MR. BYERLEY: Yes, Your Honor.

23 THE COURT: He's challenged specifically his detention and
24 his transfer. I agree, like, there was a shift from the original
25 petition and what we have clearly stated in the amended petition,

1 and they're clear. It's very focused. It's only -- the removal
2 proceedings can continue. Those are separate. But what they're
3 speaking to now, what they are challenging and the prayer for
4 relief that they are seeking directly addresses detention,
5 detention/transfer.

6 MR. BYERLEY: Yes, Your Honor. The government agrees that
7 this petition challenges detention, but the decision regarding
8 detention is inextricably bound up in the decision to institute
9 removal proceedings in the first place.

10 So, here we have a case that's somewhat similar to AADC,
11 the anti- -- the anti-Arabic discrimination -- I'm sorry. It's a
12 mouthful.

13 THE COURT: That's okay.

14 MR. BYERLEY: Where they were challenging their removal --
15 the basis of their removal proceedings. And while some of them
16 may have been detained and some of them may not have been, what
17 we're dealing with here is Mr. Suri's challenging his detention,
18 which is attendant to and directly tied into the decision to
19 institute removal proceedings in the first place.

20 THE COURT: No court -- I mean -- and this is not on
21 you -- but the government has consistently made the same argument
22 in several jurisdictions at this stage in similar -- similarly
23 situated cases, and no one has adopted that reading.

24 MR. BYERLEY: So, granted, Your Honor, many of those cases
25 are out of circuit and are not binding. At least one court did

1 find our way. That was *Taal versus Trump* out of the Northern
2 District of New York earlier this year. But, granted, courts --
3 there are reasonable grounds to disagree, and we understand that
4 there are decisions disagreeing with those positions.

5 The government disagrees with those decisions and is
6 considering or actively pursuing appellate recourse. But,
7 granted, yes, I acknowledge that there are other decisions that
8 do not go our way, but what I want to emphasize here is that
9 under *Jennings* and under *AADC*, the government disagrees with
10 those conclusions because what it did --

11 THE COURT: But *AADC* was -- you know, it only reaches --
12 1252(g) only reaches three discrete actions: The decision to
13 commence proceedings, adjudicate cases, or execute removal
14 orders.

15 MR. BYERLEY: Yes, Your Honor, but under 1252(a)(5) and
16 (b)(9), what we also have is review of questions that arise in
17 removal proceedings. Here, Mr. Suri is challenging the basis of
18 his detention, the basis of the determination under 12.7.

19 THE COURT: But the detention decision was made prior to
20 the NTA, right, and removal proceedings actually initiating?

21 MR. BYERLEY: No, Your Honor. The deportability
22 determination was made prior to the decision to -- the issuance
23 of the NTA, but it forms the basis of the NTA, and so they're
24 inextricably tied up with one another such that (a)(5) and (b)(9)
25 apply, as well as 1252(g).

1 THE COURT: But even if those were to -- you know, even
2 with those statutes, the courts are clear that they do not
3 preclude challenges to the extent of the government's authority.

4 MR. BYERLEY: Your Honor, I think you may be referring to
5 *Demore versus Kim*, which held that 1226(e) did not prohibit
6 constitutional challenges to the legislation. I don't think
7 that --

8 THE COURT: I'm looking at *Miranda v. Garland*, the Fourth
9 Circuit case.

10 MR. BYERLEY: I'm sorry?

11 THE COURT: *Miranda* --

12 MR. BYERLEY: *Miranda*.

13 THE COURT: -- *v. Garden*, the Fourth Circuit case.

14 MR. BYERLEY: Yes, Your Honor. But the government's
15 position here is that (a)(5) and (b)(9), it applies here because
16 he is challenging his detention, which is inextricably bound up
17 with the 1227(a)(4)(C) determination.

18 And so the government believes that those provisions apply
19 to bar review in this case and that the proper forum for which
20 Dr. Suri to bring his challenges is an immigration court before
21 an immigration judge, and then appeal to the BIA, if necessary,
22 and then appeal to the Fourth Circuit as necessary -- or Fifth
23 Circuit. I'm sorry.

24 THE COURT: I understand your argument. I'm not saying I
25 agree with it, but I understand.

1 MR. BYERLEY: Yes, Your Honor.

2 THE COURT: You can move on.

3 MR. BYERLEY: So, furthermore, under the *Eliely* standard,
4 I think, as Your Honor correctly identified, the void for
5 vagueness challenge suffers from fatal flaws. First is that the
6 Fourth Circuit says that the void for vagueness doctrine focuses
7 on legislation, not policies or actions.

8 THE COURT: But I don't even have to reach that.

9 MR. BYERLEY: Yes, Your Honor, that's correct. We also
10 agree with that proposition as well. Because, under the *Eliely*
11 standard, it's only constitutional claims which are at issue on
12 these sorts of motions.

13 Furthermore, the government posits that, to the extent
14 that the Court is considering granting interim release, the Court
15 also has to look at whether the interim release is necessary to
16 render the habeas -- render the habeas remedy effective, to the
17 extent the Court grants the habeas petition in his favor.

18 Over the 17 years since *Eliely* was decided, not a single
19 court on an opposed motion has granted release pending a
20 determination of habeas -- on a habeas petition.

21 The two cases on which Petitioners rely, *Brooks versus*
22 *Wilson* and *Young versus Antonelli*, Eastern District of Virginia,
23 2018; District of South Carolina, 2021, respectively; both of
24 those decisions came on unopposed motions. And in that context,
25 what the Court was looking at was that in each of those cases the

1 Fourth Circuit had recently adopted the petitioner's argument in
2 terms of improper -- improperly elevated mandatory minimums.

3 And so, if the habeas would have been granted in their
4 favor on the merits, then they would have served the full time
5 that they wouldn't have needed to serve had the Court been able
6 to rule on the habeas petition instantaneously. So that's not a
7 similar situation to what we have here. The court's habeas
8 remedy would still be effective even if --

9 THE COURT: How so?

10 MR. BYERLEY: Because the Court is -- because it's, one,
11 again going back to the jurisdictional issues; but, two, if the
12 Court grants the habeas petition on the merits, there's --
13 he's -- the authority exists for his detention. It's not a
14 similar situation in *Young* and *Brooks* where the sentence was
15 invalid -- would have been found invalid if -- the elevated
16 sentence would have been found invalid if the Court had -- if he
17 had needed to await the entire resolution of the habeas
18 proceedings.

19 But, again, bringing this back to 1252(a)(5), (b)(9), and
20 g), he's challenging underlying decisions which are inextricably
21 tied up with the --

22 THE COURT: I don't accept that reading. I don't think
23 it's inextricably intertwined. I don't.

24 MR. BYERLEY: Yes, Your Honor. Well, that's the
25 government's primary argument on this. And then, to the extent

1 that the Court is inclined to grant the motion, the government
2 requests that the conditions set out in our supplemental briefing
3 filed on Monday be imposed on any release that the Court may
4 provide. And, as well, we would ask for a stay of seven days
5 pending the government's determination on appellate recourse..

6 THE COURT: Let's go through those. In your supplemental,
7 you indicate that the Court should treat this as -- or approach
8 this as it does with respect to a preliminary injunction and
9 impose a bond. That -- you rely on a Third Circuit case. You
10 don't have any Fourth Circuit case that's done that, right?

11 MR. BYERLEY: So, Your Honor, the -- it's widely
12 recognized, and I think, even in the recent *Ozturk* opinion from
13 the Second Circuit, recognized that granting this sort of release
14 early is tantamount to a preliminary injunction reviewable order,
15 as well as there's a recent Supreme Court case, I think,
16 recognizing that as well.

17 THE COURT: But bond in a preliminary injunction context
18 is, you put -- you impose a bond so the person who the
19 injunction -- who has been enjoined, that there is something in
20 place that would make them whole if it was found out that the
21 injunction was issued in error.

22 But here, there is nothing that would be needed,
23 necessarily, to make the government whole, is there?

24 MR. BYERLEY: Well, there would be the cost of redetaining
25 him. The conditions that the government proposes in our --

1 THE COURT: The cost of what?

2 MR. BYERLEY: The cost of sort of redetaining him and
3 making a rearrest, in the event that that becomes necessary.

4 But, in any event, the Court can tailor its remedy to
5 adequately balance the needs of both sides, and we believe that
6 these conditions as we've suggested are reasonable, to the extent
7 the Court is inclined to grant release on Petitioner's motion.

8 THE COURT: Many of the conditions that you would seek
9 seem to go to a risk of flight or they would be ones that the
10 Court would impose if there was a risk of flight. What evidence
11 do you have that he poses a risk of flight?

12 MR. BYERLEY: So, Your Honor, these are just generic --
13 these are just generic conditions that would be imposed by an
14 immigration judge if -- in the event that the immigration judge
15 was deciding this issue.

16 In terms of -- in terms of flight risk and danger to the
17 community, those things are not in the record. But what we --
18 what the government would say is that Secretary Rubio made this
19 determination under 1227(a)(4)(C)(1), and so there is a
20 consideration about whether his -- whether his presence in the
21 community does cause potential serious foreign affairs
22 consequences that should also be considered kind of separate and
23 apart from flight risk and danger to the community.

24 THE COURT: That determination has never been really
25 presented to this Court. I haven't seen that memorandum.

1 MR. BYERLEY: Yes, Your Honor, that's correct. It's not
2 in the record yet, and I do not believe it's been filed in the
3 immigration court yet either at this point.

4 THE COURT: Okay. Do you have more?

5 MR. BYERLEY: Your Honor, no. Your Honor's reviewed the
6 briefing. For the reasons stated in the government's briefing
7 and also as presented here today, the Government requests that
8 the Court deny the pending motions. Thank you.

9 MS. GREGG: Thank you, Your Honor. As the Court already
10 addressed, I won't go through all the issues with the
11 government's argument as to the INA bars in this case, but it's
12 just notable that the AADC case is speaking to one provision in
13 the INA, and the government is using it to show that there's some
14 bar through 1252(b)(9), which Miranda clearly says that the
15 government does not have discretion to violate the
16 Constitution -- its discretion to detain does not include the
17 discretion to violate the Constitution, which is exactly what's
18 at issue here.

19 And, as the Court already adequately addressed, all the
20 other cases have gone the other way, cases that are dealing
21 specifically with students who are being targeted for their
22 speech under the same foreign policy bar.

23 The government brought up the case of Mr. Tall. However,
24 Mr. Taal was not challenging his detention because he was not
25 detained at the time that he brought his case. He was seeking an

1 injunction from being detained and, therefore, challenging the
2 underlying immigration charges, and so we would put that forth,
3 but all the other courts in this country that have looked at
4 these cases and situations identical to the one here for --
5 impacting Dr. Suri, they've all said that the INA doesn't -- no
6 provision of the INA bars consideration of their claims.

7 We've already gone over why habeas remedy is effective,
8 and I think that that's been sufficient, but for the *Elie*ly
9 cases, the government talks about how we've cited other -- no
10 other case has been decided in this manner in the Fourth Circuit,
11 and that is specifically because this type of remedy is for
12 unusual cases. There hasn't been a situation that has risen to
13 this level, and the government's conduct has not been so
14 egregious as it has in this case, but that shouldn't preclude the
15 Court from considering the same standard under *Mapp* that all the
16 other circuits -- or that many other circuits consider to be the
17 standard for immigration habeas cases.

18 Likewise, the government's contention that he should have
19 conditions placed on him, if he is to be released, we think that
20 that is inappropriate, since they have conceded that he is not a
21 flight risk or a danger to the community.

22 We have presented ample evidence that he is neither of
23 those things. In fact, he is a well-respected and well-loved
24 member of his community with very strong ties to this Northern
25 Virginia area.

1 If the Court would like further assurances, we are happy
2 to consider any sort of location specific restrictions in the DMV
3 area, but we would ask that the Court not subject him to any
4 body-worn GPS because we find that is inappropriate, and the
5 government has not presented any reason that that should be the
6 case.

7 Additionally, Your Honor, we ask that, although -- we ask
8 that if the government seeks a stay on any potential grant of
9 release in Dr. Khan Suri's case, we ask that we be allowed to
10 address that as well. We think that's not appropriate.

11 THE COURT: Well, I think you should address that now,
12 their arguments with respect to the stay, because there's a
13 certain -- there's a test that must be satisfied before the Court
14 would grant a stay.

15 MS. GREGG: Right.

16 THE COURT: And the first is whether there would be
17 a -- is whether the applicant has shown a likelihood or strong
18 likelihood of succeeding on the merits.

19 MS. GREGG: Correct, Your Honor. And I think, by virtue
20 of a grant on this motion, we would have shown that they do
21 not -- they are not likely to succeed on the merits because of
22 the substantial claims in this case.

23 We don't believe that the -- the government hasn't
24 presented any evidence here for any lawful authority in detaining
25 Dr. Khan Suri. We've demonstrated, on the other hand, that there

1 is evidence, sufficient evidence that his detention is currently
2 unlawful and violates his First Amendment and Fifth Amendment
3 rights.

4 Therefore, we would say that they would not likely succeed
5 on the merits. They also cannot demonstrate any irreparable
6 harm, because, again, he is neither a flight risk or danger to
7 the community, and release will not interfere with his removal
8 proceedings.

9 As we've laid out in other motions, his removal
10 proceedings are remote, so even if he's in a detention center or
11 he's out free in the world, his immigration removal proceedings
12 are not impeded in any way.

13 He, however, will suffer irreparable harm. The separation
14 from his family, from his community, from his studies, all
15 suggest -- all go to show that he would suffer if he is -- if a
16 stay was put in place. Every day that he is detained, his rights
17 are being violated.

18 And also, his release will enable him to participate
19 meaningfully in the rest of these proceedings.

20 A stay would preclude that and continue to harm him in
21 that way. The third factor relates to other parties' interests.
22 There are no other parties in this case.

23 And fourth is in public interest, and we would argue that
24 Dr. Khan Suri's release is very much in the public interest. His
25 continued detention would likely continue to have a chilling

1 effect on protected speech, which is squarely in the public
2 interest because, you know, his release would signal to the rest
3 of the country, to noncitizens, that they will not be impacted
4 for exercising their First Amendment rights as well.

5 The community will benefit, and those who deeply care and
6 value him will benefit from his release as well.

7 And for all those reasons, Your Honor, we would say that
8 the government cannot prove any one of those factors that are
9 required for a stay. Thank you.

10 THE COURT: Anything else from either side? I'm going to
11 take a brief recess, and then I'm going to come back. I'll take
12 15 minutes.

13 (Thereupon, a recess in the proceedings occurred from
14 10:34 a.m. until 11:28 a.m.)

15 THE COURT: Okay. When there was a government's motion to
16 dismiss, I issued a memorandum opinion. I'm not going to do that
17 in this case. I plan on ruling from the bench.

18 In this case, Petitioner has moved for two forms of
19 relief: One, to be returned to the Eastern District of Virginia,
20 and two, to be released on bond pending adjudication of his
21 habeas petition.

22 For the purposes of my ruling, I adopt the facts that I
23 laid out in my memorandum opinion that I previously issued, and
24 I'm first going to turn to the jurisdictional arguments raised by
25 the Respondents before I turn to the merits of Petitioner's

1 motion.

2 And first, Respondents argue that since Petitioner is
3 discretionarily detained under Section 1226(a) and 1226(e), that
4 restricts judicial review because the Secretary's discretionary
5 decisions or actions regarding the detention of alien or
6 revocation or denial of bond or parole, that, essentially, this
7 Court has no authority to review ICE's decision to detain the
8 Petitioner in Texas.

9 The Supreme Court clearly stated in the case of *Demore*
10 *versus Kim* that any provision said to bar review in habeas
11 requires a particularly clear statement of Congressional intent,
12 and that Section 1226(e) contains no explicit provision barring
13 habeas review.

14 And then, in *Miranda v. Garland*, the Fourth Circuit
15 further concluded that Section 1226(e) only forbids review of the
16 Attorney General's actions and decisions in individual
17 proceedings.

18 And with respect to the Petitioner's challenge to his
19 detention, the *Miranda* court also observed that, in *Jennings v.*
20 *Rodriguez*, the Supreme Court concluded that "the extent of the
21 government's detention authority is not a matter of discretionary
22 judgment, action, or decision, and is thus outside the scope of
23 1226(e)."

24 And, indeed, many circuits have reasoned that 1226(e) does
25 not limit habeas jurisdiction over constitutional claims or

1 questions of law or challenges to officials' statutory authority.

2 And so I find that here 1226(e) does not bar this Court's
3 review because this Petitioner does not challenge a specific
4 decision or action of the Attorney General regarding bond or
5 parole, and because he raises a constitutional challenge to the
6 secretary's authority, which is not a discretionary judgment.

7 Now, with respect to the claims that they -- or the bar
8 that they allege exists under 1252(g), in the *AADC* case, the *Reno*
9 *versus AADC*, the Supreme Court was clear that 1252(g) is to be
10 narrowly construed, and it only reaches three discrete actions of
11 the Attorney General, and that is the decision or action to
12 commence proceedings, adjudicate cases, or to execute removal
13 orders.

14 And, you know, there is a circuit split on whether
15 1252(b)(9) can even apply before a final order of removal is
16 issued, but -- and the Fourth Circuit hasn't definitively
17 answered the question.

18 But in looking at the cases in the Fourth Circuit, it's
19 clear that those rulings indicate that 1252(b)(9) would not bar
20 review here, because in *Miranda*, as I just stated -- well, there,
21 the Court found that, to the extent that it's a challenge to the
22 government's authority, then 1252(b)(9) does not bar the Court's
23 review. And Respondents have relied on the case of *Johnson v.*
24 *Whitehead*. That's another Fourth Circuit case to support their
25 position that review here would be precluded, but that case is

1 very different than the case before me, because there the
2 Petitioner was trying to, in the habeas case, was trying to
3 relitigate claims that he had made in his removal proceedings,
4 and that's not the case here. The proceedings before me are
5 totally separate from the removal proceedings.

6 And finally, I turn to their allegation of the
7 jurisdictional bar because of 1252(a)(2)(B)(ii). That statute
8 does not deprive this Court of jurisdiction because the statute
9 that they point to, 1231(g), is not a specified grant of
10 discretionary authority for the Attorney General to authorize
11 transfers. It's just not, and that's clear when looking at the
12 *Reno* case, which is a Fourth Circuit case, 2019.

13 And so, for these reasons, I find that there is no
14 jurisdictional bar to the Court reaching or deciding this habeas
15 petition, and, therefore, I turn to the merits of the
16 Petitioner's motion, and I'm going to start with the motion for
17 bond release.

18 And here, the parties don't agree whether or not *Mapp v.*
19 *Reno* or *Eliely* provide the standard, and I don't think this Court
20 definitively has to decide that because, under *Mapp*, it requires
21 that the Petitioners raise substantial constitutional claims and
22 that there are exceptional circumstances that exist that makes
23 the grant of bail necessary to make the habeas remedy effective.
24 And in *Eliely*, the standard is very similar. The only exception
25 is that it requires the prisoner to show substantial

1 constitutional claims on which he has a high probability of
2 success. And the reason why I say it's not necessary for the
3 Court to reach that is because I find here that Dr. Khan Suri
4 would meet either.

5 And I also would like to point out, I'm not entirely sure
6 that *Eliely* does apply, because in that context it was a
7 petitioner who had been held mandatorily after having committed a
8 crime, and that's not the case here.

9 And so now I'm going to turn to those constitutional
10 claims. And I don't think I need to reach all of it. Petitioner
11 raises first a Fifth Amendment challenge to the lawfulness of his
12 detention, the Rubio determination, and their policy.

13 And, essentially, he alleges that he's being retaliated
14 against for his religious exercise, his speech, and for his
15 association. Essentially, he alleges that he was targeted,
16 apprehended, and detained in order to retaliate against him and
17 punish him based on his or his wife's protected speech and his
18 association with his wife and his father-in-law. And here, the
19 First Amendment extends to noncitizens, as it makes no
20 distinction between citizens and noncitizens.

21 Now, in order to make out a First Amendment retaliation
22 claim, a plaintiff or petitioner must show that he has a right
23 protected by the First Amendment; the Defendant's or Respondent's
24 actions were motivated or substantially caused by the exercise of
25 that right; and that the Defendant's actions caused the Plaintiff

1 some injury. Now, what's uncontroverted before me in this
2 record, because I gave the government multiple opportunities to
3 submit any type of filing to controvert these claims or to
4 support their opposition to this motion, and they have declined.

5 And so what I have before me as uncontroverted is that the
6 plaintiff made posts, and these allegations are -- these
7 statements that I am outlining come from both the amended
8 petition, which was verified, as well as the declaration of his
9 wife, and that is that he made posts expressing support for the
10 Palestinian people criticizing the death toll in Gaza, affirming
11 international law principles, and criticizing U.S. support for
12 Israel's support in Gaza.

13 Additionally, his wife began posting on social media about
14 the war in Gaza, after losing family and friends in the war, and
15 she shared information about developments in Gaza.

16 Statements expressing support for the Palestinian people
17 criticizing the death toll in Gaza, affirming international law
18 principles, and criticizing U.S. support do not appear to qualify
19 as incitement, defamation, obscenity, or true threats of
20 violence, and thus they are unlikely to fall into any exceptions
21 for protected speech.

22 Indeed, I join several other courts that have found on
23 similar facts that speech regarding the conflict there and
24 opposing Israel's military campaign is likely protected political
25 speech.

1 Thus, the Court finds that Petitioner was likely engaging
2 in protected speech.

3 Now, with respect to his freedom of association claim that
4 is part of his First Amendment claim, he alleges that he is being
5 punished for his wife's Palestinian origin or speech or her
6 father's past as an advisor in the government in Gaza.

7 The First Amendment similarly restricts the ability of the
8 state to impose liability on an individual solely because of his
9 association with another. That's the *Clayborne* case from the
10 Supreme Court.

11 Courts recognize a First Amendment freedom of intimate
12 association. That's the *Roberts versus USJCs* case, also from the
13 Supreme Court.

14 And here, again uncontroverted, Petitioner has offered
15 evidence that he is being retaliated against and punished for his
16 marital relationship and his wife's familial relationship. And
17 these concern his freedom of intimate association. Relationships
18 such as family and marriage often want First Amendment protection
19 because of -- because such protections safeguard the ability
20 independently to define one's identity that is essential to any
21 concept of liberty. That's the *Roberts* case.

22 And so I find that the Petitioner has satisfied the first
23 element as to his freedom of association claim because
24 Petitioner's marriage to his wife and association with her and
25 her father is protected by the First Amendment.

1 Now, with respect to the second element, Petitioner has
2 offered evidence sufficient for this Court to infer that
3 Respondent's detention and apprehension of Petitioner was caused
4 by his speech, his wife's speech, or his association with his
5 wife and his wife's father.

6 As evidence of the respondent's retaliatory motive,
7 Petitioner points to several statements of Respondents' or their
8 representatives. First, he identifies statements made by
9 Secretary of State Marco Rubio on Twitter calling student
10 protesters Hamas supporters and indicating that "the United
11 States should cancel the visa of every foreign national out there
12 supporting Hamas and get them out of America."

13 Also, "We will be revoking the visas and/or green cards of
14 Hamas supporters in America so they can be deported." These are
15 the statements that I am quoting -- I am referencing based on the
16 allegations in the petition. I'm not indicating that Dr. Khan
17 Suri is a Hamas supporter. Let me be clear about that. I'm
18 recounting the statements here.

19 There was also a statement that they referenced by
20 President Trump, and it is, "We will terminate the visas of all
21 those Hamas sympathizers and will get them off our college
22 campuses, out of our cities, and get them the hell out of our
23 country". And there was another statement. "One thing I do is,
24 any student that protests, I throw them out of the country. You
25 know, there are a lot of foreign students. As soon as they hear

1 that, they're going to behave."

2 Additionally, the petition, as well as the -- it's docket
3 number 62, I believe, that was the supplemental filing by
4 Petitioner in this case, attaches additional statements or
5 postings made by DHS officials that specifically appear to
6 reference Dr. Khan Suri because he's referred to as a Georgetown
7 scholar, a Georgetown foreign exchange student.

8 I note for the record that, although officials -- and
9 these posts, I believe, were all after the filing of this
10 petition, and those statements were made publicly on Twitter or
11 in other forms. There was no evidence submitted to this Court
12 regarding statements that he made. The government did not submit
13 any statements to this Court in this regard, but yet these
14 statements were made out on social media.

15 So, Respondents have declined to dispute the merits of
16 Petitioner's claims that he is being retaliated against for his
17 speech or his association. Essentially, in the opposition, they
18 rest on three propositions, and, one, that the challenges to
19 Petitioner's removability are more appropriately channeled to his
20 removal proceedings. But, as I said earlier, this habeas
21 petition is not about the removal proceedings. Those are
22 separate. They are not being challenged here.

23 So I reject that argument.

24 They also argue that Respondents do not have to disclose
25 their reasons in cases concerning foreign affairs, which are

1 committed to the Secretary's discretion, and that the Secretary's
2 determination is a facially legitimate justification for his
3 determination and removal, and thus they are not required to show
4 or prove anymore.

5 As I noted earlier, I haven't even received evidence of
6 his determination because that memorandum was never submitted to
7 this Court, although it could have been.

8 But in any event, those arguments appear to rest on the
9 notions of deference and a presumption of regularity on the part
10 of the executive.

11 While there are many contentions in which courts should
12 take care to respect the prerogatives of the political branches,
13 whatever deference may be appropriate, concerns of national
14 security and foreign relations do not warrant abdication of the
15 judicial role. That's the *Holder* case, *Holder v. Humanitarian*
16 *Law Project*, another Supreme Court case from 2010.

17 So, in no case do courts simply accept without more
18 government handwaving at deference and discretion.

19 And so, even in *Holder*, because Respondents rely on that
20 case, too, the *Holder v. Humanitarian Law Project* case, it
21 discusses the need for caution when faced with substitute courts
22 substituting their judgment for those of the political branches.

23 It also stated that, even when national security and
24 foreign relations are at stake, the Court does not defer to the
25 government's reading of the First Amendment.

1 Also, at no point is the government relieved of any duty
2 to adequately substantiate its determination. And even in the
3 *Humanitarian Law Practice* case, the Court noted that, "the
4 judgment of Congress and the executive is entitled to significant
5 weight," but that statement alone, that concept alone does not
6 mean that it predetermines the outcome.

7 And finally, as to the First Amendment claim, the
8 Plaintiff or Petitioner has sufficiently demonstrated an injury
9 in terms of his continued detention.

10 Now, moving to the Fifth Amendment claim, under the due
11 process clause of the Fifth Amendment, "No person shall be
12 deprived of life liberty or process without due process of law."
13 And freedom from imprisonment, from government custody,
14 detention, or other forms of physical restraint lies at the heart
15 of liberty the clause protects." That's *Zadvydas*, a Supreme
16 Court case.

17 Under *Zadvydas*, subsequent due process claims are
18 cognizable in civil immigration cases, and detention is not
19 designed to be punitive. That's the *Demore* case and the *AADC*
20 case, both from the Supreme Court.

21 Now, detention is permissible to ensure the appearance of
22 noncitizens at future immigration proceedings and preventing
23 danger to the community, and I agree with other courts in
24 immigration-related cases who have found the Fifth Amendment due
25 process challenges to the detention to be substantial. Here,

1 Petitioner alleges that his detention is unjustified because it
2 serves no lawful purpose and may be punitive. And at this time
3 Respondents offer no other lawful purpose for Petitioner's
4 detention, nor directly refute that Petitioner's detention is
5 punitive.

6 In addition, Respondents have provided no other evidence
7 of Petitioner's activities, actions, or statement regarding
8 any -- that would consist of any Hamas propaganda or demonstrate
9 that he has done anything in support of Hamas.

10 To the extent Petitioner's apprehension and detention is
11 based on a chain of familial association, his marital tie to his
12 wife, and his familial tie to her father, these actions would
13 violate the due process clause in the Fifth Amendment as well as
14 the First Amendment.

15 And given Petitioner's uncontroverted evidence, I find
16 that he has shown a substantial likelihood -- or a likelihood, a
17 high probability of prevailing on those substantial
18 constitutional claims he has raised.

19 Now I'll turn to the second requirement, and that is the
20 exceptional circumstances that exist that would grant -- which
21 would make the grant of bail necessary to make the habeas remedy
22 effective.

23 Okay. Now, considering the traditional bail factors, we
24 look to the risk of flight or danger to society. And here,
25 there's no evidence to suggest that Petitioner is a flight risk

1 or poses a danger to society. He is a professor at Georgetown
2 University. He is married to an American citizen. He has three
3 young children, all who reside in Virginia. Respondents have
4 offered no reason to suggest that he would have any incentive to
5 flee.

6 In addition, I received letters from many colleagues,
7 community members, and even family written on Dr. Khan Suri's
8 behalf, emphasizing his personal and scholarly commitments to
9 peace and conflict resolution.

10 What those letters also evidence, though, are very strong
11 ties to community here. And so, additionally, the Court has seen
12 no credible evidence supporting that he is a danger to the
13 community. He has not been accused of any crime, and he's not
14 been convicted of any crime. No criminal record was presented to
15 this Court or any facts from which this Court could conclude that
16 he would be any sort of danger.

17 I also find that his release is necessary to make habeas
18 remedy effective. It's the only remedy that could make habeas
19 remedy effective, and that's for many reasons. One is that it
20 would disrupt the chilling effect of retaliation for protected
21 political speech or intimate associations, but, more importantly
22 for him, having been confined for this amount of time for what
23 the record before this Court is punitive reasons.

24 As the Supreme Court explained, the loss of First
25 Amendment rights for even minimal periods of time unquestionably

1 constitutes irreparable harm.

2 And so, because I find that Petitioner has raised
3 substantial constitutional claims for which he has a high
4 probability of success and that extraordinary circumstances exist
5 which make the grant of bail necessary to make the habeas remedy
6 effective, this Court grants Petitioner's motion for bond
7 release, and so I will deny the motion for return as moot.

8 In terms of conditions, I'm going to impose the following:
9 And that is that he reside in the -- in Virginia; that he attend
10 all court hearings in this case in person, unless excused by
11 order of the Court; and that he participate in his -- the
12 separate removal proceedings.

13 I'm not going to impose any of the other suggested
14 conditions proposed by the government because I don't find that
15 they are necessary in this case because they typically speak to
16 situations where there is the concern about flight, and I just
17 don't find that here.

18 I also do not think it is necessary to impose any bond in
19 this case, because that's also not necessary to assure his
20 appearance. Your exceptions are preserved.

21 Mr. Byerley, did you want to be heard separately as to
22 your motion to stay, or did you already raise everything that you
23 wanted to raise?

24 MR. BYERLEY: No, Your Honor. The only -- the only basis
25 for our request for a stay is to allow the government to seek

1 appellate recourse -- to consider seeking appellate course, which
2 involves consultation with multiple agencies, as well as OC, a
3 process that takes time. A week to seven days is an appropriate
4 amount of time, but the reason for that is stated in our papers.
5 Thank you.

6 THE COURT: Okay. I understand. Okay. And so, in order
7 to determine whether a grant of stay is appropriate, and I listed
8 this out earlier when I gave Petitioner's counsel the opportunity
9 to respond or to address it in advance, the first prong is
10 whether there has been a strong showing of likelihood to succeed
11 on the merits, and based on my ruling in regards to Petitioner's
12 high probability of succeeding on the merits, you have not met --
13 or the government has not met the first prong.

14 Additionally, I find that there isn't any irreparable harm
15 here by me ordering release. In making that finding, I'm
16 saying -- because there -- there's no showing that he's a risk of
17 flight or danger to the community, so he will be here and
18 available to still continue his participation in his removal
19 proceedings, which, from what I understand, are remote anyway.

20 Third, there does not appear to be any other parties
21 interested in the proceedings that would be injured by the stay.

22 And fourth and finally, I find that his release is in the
23 public interest in order to disrupt the chilling effect on
24 protected speech.

25 And so I'm going to decline to stay my ruling pending

1 appeal. Exceptions are preserved. Is there anything further?

2 MS. GREGG: Yes, Your Honor. We would just like to
3 discuss a little bit of the logistics, since this is an oral
4 order given.

5 THE COURT: Well, I'll have a -- I'm going to issue an
6 order, a written order granting your motion.

7 MS. GREGG: I appreciate that, Your Honor.

8 THE COURT: Okay.

9 MS. GREGG: And I would just draw the Court's attention to
10 issues that were presented in Ms. Ozturk's case when she was
11 given an order that didn't specify exactly the conditions.

12 THE COURT: Okay.

13 MS. GREGG: Namely, that ICE -- there was a large lag time
14 between the ordering of her release and her actually being
15 released because ICE attempted to put GPS monitoring on her.

16 THE COURT: Well, I've already --

17 MS. GREGG: Outside of --

18 THE COURT: Said that I was not going to -- one of their
19 requests here was the GPS monitoring, and I have refused that,
20 because I said that it is not necessary here. You usually put
21 that on when there's a flight risk, and I said there's no flight
22 risk.

23 MS. GREGG: Of course, Your Honor. I agree with that, as
24 well. I just wanted to make it clear that that is something that
25 has come up in another case, and so that it -- if the Court would

1 be willing to make that explicit in the written order, in case
2 there are any issues in Prairieland, we have an attorney there
3 waiting for the Court's decision here.

4 THE COURT: Okay.

5 MS. GREGG: And if the Court is amenable to any other
6 clarifications to the order, we would ask that it make clear that
7 he cannot be redetained or that he shouldn't be redetained by ICE
8 without giving sufficient notice to the Court and to counsel so
9 that we can look into the basis for redetention, given that he
10 needs to travel from Prairieland to here, which would require him
11 to go through TSA or make a long drive. Redetention under the
12 current environment in this country is of concern for us, as well
13 as to the issues that -- redetention, which the government
14 alluded to, and so we would just, you know, ask the Court --

15 THE COURT: Okay. You said could not be redetained
16 without giving sufficient notice to the Court and counsel; 48
17 hours?

18 MS. GREGG: Yes, Your Honor, so that we can appear before
19 the Court and have an opportunity to hear the government's
20 reasoning.

21 THE COURT: Okay. Anything else?

22 MS. GREGG: That's all, Your Honor.

23 THE COURT: So no -- explicitly state "no GPS monitoring,"
24 and then include this -- you're requesting that the Court include
25 this requirement that he not be redetained without notice to the

1 Court and counsel.

2 Mr. Byerley, do you want to be heard on these?

3 MR. BYERLEY: Your Honor, I would need to confer with my
4 client based on the order. I don't want to say anything out of
5 turn at this point without --

6 THE COURT: I understand that. I understand that. Okay.
7 But just know I'm going to enter this order as requested. I find
8 that reasonable, and so I am, but -- I know you all will be
9 taking all steps as soon as I leave the bench. So, if there's
10 nothing -- if there's nothing further, then we are adjourned.

11 (Proceedings adjourned at 12:07 p.m.)
12

13 **C E R T I F I C A T E**

14 I, Scott L. Wallace, RDR-CRR, certify that
15 the foregoing is a correct transcript from the record of
16 proceedings in the above-entitled matter.

17 /s/ Scott L. Wallace

5/15/25

18 **Scott L. Wallace, RDR, CRR**
19 **Official Court Reporter**

Date

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